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2013 IL App (4th) 130556-U

NO. 4-13-0556

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 28, 2013

Carla Bender

4th District Appellate
Court, IL

In re: Ml. H. And My. H., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA14
GWENDA HARRIS,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding the trial court did not err in dismissing respondent as a party and discharging her court-appointed attorney after the court transferred guardianship to the Department of Children and Family Services following an adjudication of neglect under the Juvenile Court Act.

¶ 2 Following May 2013 adjudicatory and dispositional hearings, the trial court placed guardianship with the Department of Children and Family Services (DCFS) and dismissed as a party, respondent, Gwenda Harris, who had care of twins Ml. H. and My. H. (born Feb. 14, 2013).

¶ 3 Respondent appeals, arguing the trial court erred by dismissing her from the case and discharging her court-appointed attorney.

¶ 4 We affirm.

¶ 5

I. BACKGROUND

¶ 6

In March 2013, the State filed a petition for adjudication of neglect and sought shelter care placement, alleging Ml. H. and My. H. (born February 14, 2013) were neglected because the children's mother, Tyisha Hillard, (1) provided an injurious environment by exposing the children to substance abuse (705 ILCS 405/2-3(1)(b) (West 2012)); (2) provided an injurious environment by providing inadequate supervision for the children (705 ILCS 405/2-3(1)(b) (West 2012)); and (3) failed to provided the children with adequate food, clothing, and shelter (705 ILCS 405/2-3(1)(a) (West 2012)). The twins were in the care of respondent, their great-aunt, pursuant to a DCFS safety plan. The State added respondent as a party to the proceedings and asked the court to list respondent on the petition as temporary guardian.

¶ 7

At the shelter care hearing, Kristi Carr, a DCFS child welfare investigator, testified that in February 2013, DCFS received notice that Hillard tested positive for phencyclidine (PCP) at the time of giving birth to the twins. At the time, Hillard resided in Chicago. DCFS, through its Chicago office, approved Hillard's plan to assign temporary guardianship of Ml. H. and My. H. to respondent, who was in the process of relocating to Champaign. A safety plan was implemented requiring respondent to supervise any visits between Hillard and the children.

¶ 8

According to Carr, while Hillard and the children transitioned to respondent's home in Champaign, a DCFS caseworker from Champaign visited respondent's home and discovered the children alone with Hillard, in violation of the safety plan. The caseworker attempted to refer Hillard to substance abuse treatment, but Hillard refused to sign the releases required to complete the referral. Respondent was also uncooperative, indicating she would only

work with the DCFS caseworker from Chicago.

¶ 9 In March 2013, DCFS received a report indicating respondent and Hillard did not have food, diapers, or car seats for the children. At that time, DCFS took protective custody of the children. A review of the record revealed Hillard had prior indicated reports for neglect in 2009. Carr did not know whether respondent had any prior indicated reports with DCFS.

¶ 10 Respondent testified she maintained daily contact with her DCFS caseworker from Chicago after moving the children into her Champaign home. Respondent believed the safety plan allowed Hillard to have unsupervised contact with the children within the home; however, respondent said she never left Hillard alone with the children. She also denied a caseworker visited the home and found Hillard alone with the children.

¶ 11 While respondent worked during the day, her daughter, an unemployed nurse, provided child care. Respondent stated Hillard was scheduled to begin substance abuse treatment the day after the hearing, despite the caseworker's contention that Hillard refused to cooperate with services. Additionally, respondent testified she had car seats for transporting the children. Respondent denied that DCFS had any indicated reports against her, explaining that her only prior contact with DCFS occurred when a girl known by respondent ran away from home and showed up at respondent's house. As of the hearing date, respondent had filed paperwork for guardianship of the twins but had not yet obtained legal guardianship through the court.

¶ 12 Following the presentation of evidence, the trial court found the State met its burden of proof and that an immediate and urgent necessity existed for the court to place temporary guardianship with DCFS. The court then granted supervised visitation to Hillard but

denied visitation for respondent.

¶ 13 At the May 2013 adjudicatory hearing, the trial court heard substantially similar evidence to that presented at the shelter care hearing and determined the State proved the petition by a preponderance of the evidence. Following a dispositional hearing later that month, the court found it was in the best interests of the children to make the children wards of the court and to grant DCFS guardianship. At that time, the court dismissed respondent as a party to the proceedings and discharged her court-appointed attorney, relying on *In re C.C.*, 2011 IL 111795, 959 N.E.2d 53. Respondent filed a timely notice of appeal but the court did not initially appoint counsel to represent her on appeal. On this court's motion, the case was remanded to the Champaign County Circuit Court for appointment of appellate counsel.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent asserts the trial court erred in striking her from the petition and dismissing her from the case.

¶ 17 We begin by noting respondent does not challenge the trial court's finding of neglect or its decision to grant DCFS guardianship. Thus, the central question in this case is whether the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 to 405/7-1 (West 2012)) permitted the court to dismiss respondent from the case and discharge her attorney once the court granted guardianship to DCFS. We determine issues of statutory construction *de novo*. In interpreting a statute, we must give unambiguous statutory language its plain and ordinary meaning. *People v. Davison*, 233 Ill. 2d 30, 40, 906 N.E.2d 545, 551 (2009).

¶ 18 Section 1-5 of the Juvenile Court Act provides,

(1) Except as provided in this Section and paragraph (2) of Sections 2-22, 3-23, 4-20, 5-610 or 5-705, the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel.

* * *

(2)(a) Though not appointed guardian or legal custodian or otherwise made a party to the proceeding, any current or previously appointed foster parent or relative caregiver, or representative of an agency or association interested in the minor has the right to be heard by the court, but does not thereby become a party to the proceeding." 705 ILCS 405/1-5(1), (2)(a) (West 2012).

¶ 19 The trial court indicated it based its decision to dismiss respondent from the case on *In re C.C.* (no citation given). On appeal, counsel for the respondent improperly cites *In re C.C.*, 406 Ill. App. 3d 360, 943 N.E.2d 732 (2010), which was reversed by the Illinois Supreme Court in *In re C.C.*, 2011 IL 111795, 959 N.E.2d 53, and is no longer good law. "[A] trial court is presumed to know the law and apply it properly." *People v. Phillips*, 392 Ill. App. 3d 243, 265, 911 N.E.2d 462, 483 (2009). Therefore, we presume the court was referring to *In re C.C.*,

2011 IL 111795, 959 N.E.2d 53, in rendering its decision.

¶ 20 *In re C.C.* originated from the same trial court as the present case. *In re C.C.*, 2011 IL 111795, 959 N.E.2d 53. In *In re C.C.*, the respondent was the legal guardian of the minor children until the trial court placed guardianship with DCFS following the adjudicatory and dispositional hearings. *In re C.C.*, 2011 IL 111795, ¶ 25, 959 N.E.2d 53. At that time, the court terminated the respondent's guardianship and dismissed her from the case. *In re C.C.*, 2011 IL 111795, ¶ 25, 959 N.E.2d 53. The supreme court, in overturning this court's decision in *In re C.C.*, 406 Ill. App. 3d 360, 943 N.E.2d 732 (2010), held the trial court correctly dismissed the respondent from the case and discharged her appointed counsel because, as a former guardian, the respondent no longer qualified to remain as a party. *In re C.C.*, 2011 IL 111795, ¶ 33, 959 N.E.2d 53. However, the supreme court also noted the respondent maintained limited rights as a former guardian, such as the ability to testify at future proceedings or to seek restoration of her guardianship. *In re C.C.*, 2011 IL 111795, ¶ 54, 959 N.E.2d 53.

¶ 21 We recognize respondent was routinely referred to as the temporary guardian in this case. However, as respondent's legal status may impact future proceedings, it is incumbent that we point out respondent was not the guardian. At best, respondent had a pending petition for guardianship. Respondent is more accurately identified as a responsible relative. 705 ILCS 405/1-5(1) (West 2012). Regardless of whether respondent was a guardian or a responsible relative, the analysis remains the same for purposes of resolving the issue presently before this court. In this case, respondent had the care of the children at the time DCFS removed the children and thus, respondent was an appropriate party to the case during the initial proceedings. However, under the plain language of section 1-5(1) of the Juvenile Court Act, following the

dispositional hearing when the trial court granted guardianship to DCFS, respondent was no longer a responsible relative and, therefore, no longer a required party to the case entitled to appointed counsel. 705 ILCS 405/1-5(1) (West 2012). We therefore conclude the court's reliance on *In re C.C.* was appropriate and the court did not err in dismissing respondent from the case or discharging her counsel.

¶ 22

III. CONCLUSION

¶ 23

For the foregoing reasons, we affirm the trial court's judgment.

¶ 24

Affirmed.